

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

November 22, 2013

- I. ATTENDANCE - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, November 22, 2013. Members present were Chairman Barry Stumbo, Noel White, Joseph Smith, Janice Meyer, James Griggs, Thomas Glover, and Kathryn Moore. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; Mike Sanner, Department of Law. Staff members in attendance were: Bill Sallee, Barbara Rackers and Tammye McMullen.

Swearing of Witnesses – Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

- II. APPROVAL OF MINUTES - The Chair announced that there were no minutes to consider at this time.

III. PUBLIC HEARING ON ZONING APPEALS

- A. Sounding the Agenda - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. Postponement or Withdrawal of any Scheduled Business Item - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **V-2013-77: NEPTALI DIAZ** - appeals for a variance to reduce the required side yard from 8 feet to 1.5 feet in order to retain a detached storage shed in a Single Family Residential (R-1C) zone, at 1910 Picadilly Street (Council District 11).

The Staff Recommends: Approval, for the following reasons:

- Provided the applicant can obtain an encroachment agreement from all utility companies, as well as the Urban County Government, reducing the required side yard from 8' to 1.5', for the purpose of retaining the accessory structure in the side yard, will not adversely affect the public health, safety, or welfare, nor adversely affect the character of the area.
- There would not be an unreasonable circumvention of the Zoning Ordinance with this variance, as it is common for storage sheds to be 18" from side and rear property lines, as there is one on the adjacent property as well.
- The special circumstance that applies to this property is the unusually wide existing side yard, which is about 20 feet in width, which is more than double the required 8-foot minimum.
- Strict application of the Zoning Ordinance will require the property owner to move the structure a considerable distance on the lot, which due to its size and type of construction will be difficult and costly for the appellant.
- There is not a willful violation or other attempt to circumvent the requirements of the Zoning Ordinance by the appellant, as it was unknown to him at the time that a permit was required for an accessory structure.

This recommendation of approval is made subject to the following condition:

- The applicant shall obtain a building permit from the Division of Building Inspection, including a reference to the Board's action after receiving an encroachment agreement from all the utility companies and the Urban County Government prior to the issuance of the Permit.
- All encroachment agreements and the Zoning Compliance Permit and the Building Permit shall be obtained within four months of the Board's action, or this shed will be required to be relocated a minimum of 5 feet from the side property line at the applicant's expense.

At this time, Mr. Sallee announced that Ms. Rackers had contacted the applicant, and the applicant advised that he was unable to attend this meeting due to a work conflict. He indicated he would be interested in a postponement of this request to the Board's December 13th meeting.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to postpone **CV-2013-77: NEPTALI DIAZ** to the December 13, 2013 Board of Adjustment meeting.

2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board would proceed to take action.

- B. Transcript or Witnesses - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. Variance Appeals - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

(Sounded Items)

1. **V-2013-72: WANDA R. BERTRAM** - appeals for a variance to reduce the required setback along Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 735 W. High Street (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare nor will it alter the character of the neighborhood. The second-story deck will not infringe on the use of the right-of-way of the subject property or surrounding properties and it will not be out of character, as other adjoining properties have similar rear decks.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because of the unique circumstances of this lot.
- c. The configuration of the street at the back of the property, the topographic difference between the street and the second-story deck, and the fact that there is no developable land on the other side of the street are all special circumstances that contribute to justifying the requested variance.
- d. Strict application of the Zoning Ordinance will deny the applicant the ability to place the second-story deck on the rear of the property. The two lots that make up this one duplex are the only two properties of the seven that have access to Ty Court that do not have a second-story deck.
- e. The need for the variance was recognized during the normal permitting process for the deck. There is not any willful violation of the Zoning Ordinance associated with this request.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall obtain all necessary permits from the Division of Building Inspection for the deck.
2. An administrative action plat shall be filed in accordance with the requirements of the Division of Planning reflecting the action of the Board.

Representation – Ms. Wanda Bertram, appellant, was present and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. White, seconded by Mr. Smith, and carried unanimously to approve **V-2013-72: WANDA R. BERTRAM** - appeal for a variance to reduce the required setback along Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 735 W. High Street (Council District 2), as recommended by the staff and subject to the conditions as recommended by staff.

2. **V-2013-75: PAUL KRESTIK** - appeals for a variance to reduce the required setback from Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 801 W. High Street (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance will not adversely affect the public health, safety or welfare nor will it alter the character of the neighborhood. The second-story deck will not infringe on the use of the right-of-way of the subject property or surrounding properties and it will not be out of character, as other adjoining properties have similar rear decks.
- b. Granting the requested variance will not allow an unreasonable circumvention of the requirements of the Zoning Ordinance because of the unique circumstances of this lot.
- c. The configuration of the street at the back of the property, the topographic difference between the street and the second-story deck, and the fact that there is no developable land on the other side of the street are all special circumstances that contribute to justifying the requested variance.
- d. Strict application of the Zoning Ordinance will deny the applicant the ability to place the second-story deck on the rear of the property. The two lots that make up this one duplex are the only two properties of the seven that have access to Ty Court that do not have a second story deck.
- e. The need for the variance was recognized during the normal permitting process for the deck. There is not any willful violation of the Zoning Ordinance associated with this request.

This recommendation of approval is made subject to the following conditions:

1. The applicant shall obtain all necessary permits from the Division of Building Inspection for the deck.
2. An administrative action plat shall be filed in accordance with the requirements of the Division of Planning reflecting the action of the Board.

Representation – Mr. Paul Krestik, appellant, was present, and he indicated that he had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Ms. Moore, seconded by Ms. Meyer, and carried unanimously to approve **V-2013-75: PAUL KRESTIK** - appeal for a variance to reduce the required setback from Ty Court from 24 feet to 10 feet in order to construct a rear yard deck in a Two Family Residential (R-2) zone, at 801 W. High Street (Council District 2), for the reasons recommended by the staff and subject to the two conditions recommended by the staff.

D. Conditional Use Appeals
(Sounded Items) (cont'd)

1. **C-2013-73: MISTER MONEY/FIRST CASH FINANCIAL SERVICES, INC.** - appeals for a conditional use permit to expand an existing pawn shop in a Highway Service Business (B-3) zone, at 1300 Winchester Road (Council District 5).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as the subject property is surrounded on three sides by other commercial uses, and is physically separated from the nearest residential use by a privacy fence and trees.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The pawnshop shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to any construction and/or renovation, and prior to opening the pawn shop.
3. The applicant shall maintain signage compliant with Article 17 of the Zoning Ordinance at all times, and a Zoning Compliance Permit for this conditional use shall not be issued by the Division of Planning until window signage is in compliance with those requirements.

Representation – Mr. Dick Murphy, attorney, was present representing the appellant. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion.

Action – A motion was made by Mr. Griggs, seconded by Ms. Moore, and carried unanimously to approve **C-**

2013-73: MISTER MONEY/FIRST CASH FINANCIAL SERVICES, INC - appeal for a conditional use permit to expand an existing pawn shop in a Highway Service Business (B-3) zone, at 1300 Winchester Road (Council District 5), based on the staff's recommendation and subject to the three conditions.

2. **C-2013-74: BARBARA DALE** - appeals for a conditional use permit to provide family child care for up to 12 children in a Single Family Residential (R-1C) zone, at 4189 Forsythe Drive (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adequate off-street and on-street parking is available for this use. As a condition of approval, a fenced and screened outdoor play area will be provided outside of the designated floodplain. Noise and other disturbances to surrounding property owners are not anticipated, as care for the twelve children will only be provided during daytime hours.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Child care shall be provided in accordance with the submitted application and a clarified, modified, site plan; to the approval of the Division of Planning; and shall only be operated from 6:00 am - 6:00 pm Monday-Friday.
2. All necessary permits, including issuance of a Zoning Compliance Permit, Fence Permit, and a Certificate of Occupancy, shall be obtained from the Divisions of Planning and Building Inspection prior to initiation of the child care use for more than six (6) children at this location.
3. The fence shall be erected outside the limits of the current floodplain in the rear of the property.
4. All play equipment for children to be located in the rear yard, shall be located between the fence and the rear wall of the dwelling, outside of the floodplain.
5. The Division of Planning shall not issue a Zoning Compliance Permit until adequate fencing is in place, is deemed to be safe, and meets the requirements of the Zoning Ordinance.
6. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
7. This conditional use shall become null and void should the applicant no longer reside at this location.

Representation – Ms. Barbara Dale, appellant, was present and she indicated that she had reviewed the recommended conditions and agreed to abide by them.

At this time, Ms. Rackers passed out several letters of opposition to the Board. Mr. Sallee announced that at 11:00 a.m. on this date, a citizen distributed most of this information to the staff, and there were about three other letters that were received independently prior to these about this application (one of which included color photographs of the subject property).

Board Questions – Mr. Glover asked staff what the Board is looking at here from Health and Human Services; and if the staff had all of this information. Mr. Sallee stated that, as mentioned before, it arrived about 11:00 a.m. on this date. Mr. Glover asked Mr. Sallee if staff had a chance to look over this information. Mr. Sallee stated that there had not been that opportunity until this current time.

Mr. Sallee said that he noted on the first page of both packets from the Cabinet of Family Services, the Lexington office, that these appear to be for Barbara's Loving Learning Center at 3323 Partner Place. At first, the staff wasn't sure if this involved the subject property or another location; upon inspection however, it does appear that these are for another location. Mr. Sallee stated that there is currently family child care ongoing on the subject property, but for six or fewer children, and so this application is to increase that number.

Note: The Chair paused the hearing for a few minutes to allow the Board to review these documents.

Chairman Stumbo said that the Board has taken a look at this. There is a lot of information to go through, and obviously the staff has not had the opportunity to look at it either; therefore, he is leaning toward postponing this until the next meeting, in order to give the Board and staff time to evaluate this material.

Appellant Comment - At this time, Ms. Dale stated that she has a daughter that is living in her house that has five children, and those five children are there. She also said that they just received custody of their youngest daughter's three children; and there is not a daycare at her home right now. Ms. Dale stated that she closed Barbara's Loving Learning Center on October 31st. She also stated that the information from Family Services is where the state representative comes to a daycare and looks over the daycare to see if things need to be improved. There have been a few things on the list that are in compliance, but a few things that are not. Ms. Dale

also said that she has the state's letter that says that they have been approved, and would like to bring that back so that the Board can take a look at it as well.

Ms. Moore asked if this should be a continuance or a postponement. Mr. Sallee stated that it didn't really matter. He said that, had there been a lengthy discussion, the staff's preference would have been for a continuance. Chairman Stumbo stated that it should probably be a continuance since the case has already been brought up.

Since there were no further questions or comments from the Board, Chairman Stumbo called for a motion for a continuance of this hearing.

Action – A motion was made by Ms. Moore, seconded by Ms. White, and carried unanimously to continue **C-2013-74: BARBARA DALE** to the Board's December hearing.

E. Variance Appeals

(Discussion Items)

1. **V-2013-76: THE OAKS CONDOMINIUM ASSOC.** - appeals for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 7 feet in a Townhouse Residential (R-1T) and a Planned Neighborhood Residential (R-3) zone, at 395 Redding Road (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance will not adversely affect the subject or surrounding properties; nor will it affect the public health, safety, or welfare, as the proposed fence will not be in the sight triangle for this intersection. It will not alter the character of the vicinity or cause a nuisance to the public, as this site has long had a 6' tall fence with 7' decorative posts in its frontyard.
- b. Granting this variance will not allow an unreasonable circumvention of the Zoning Ordinance since it is promoting the redevelopment of the entry to this property in a way that is compatible with the existing development pattern. The requested variance is minor in nature (only about 10% of the linear feet of new fencing) and not contrary to the intent of the Zoning Ordinance requirements.
- c. The subject property was developed prior to the adoption of the current Zoning Ordinance, particularly Article 15-4(b), which now requires a maximum 4' fence height in the front yard. The majority of the existing fence surrounding this property is a legal non-conforming fence with an average height of 6' (and up to 7' at the columns). The small portion of fence requested for this variance will allow it to remain at a consistent height to easily tie into the existing fence.
- d. Strict adherence to the Zoning Ordinance would constitute a hardship to the appellant, because it would require that a fence be constructed that is incompatible with the existing fencing and entry features of the property.
- e. The requested variance is not the result of a willful violation of the Zoning Ordinance. The applicant seeks to upgrade the existing gated entry to improve circulation and safety; and the height variance for the fence is a reasonable part of that redevelopment project to ensure compatibility with the existing.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with this application and site plan, unless specific changes are required by the Fire Department, Traffic Engineering, or by the Planning Commission on a revised development plan.
2. All fence permits shall be obtained from the Division of Building Inspection prior to its construction.
3. The Fire Department shall have final review and approval of any gate modification to this site.
4. The applicant shall submit an amended development plan for this property, identifying the new gate, prior to the issuance of permits.

Representation – Mr. Andy Holmes with Midwest Engineering was present representing the appellant, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Comments – At this time, Mr. Sallee stated that this is a variance to allow the maximum height of a fence to exceed the current zoning restriction of the 4-foot height, to allow a 7-foot high fence in front of the main entryway into the Oaks Condominium Property. He said this development is on Redding Road directly across the street from the Kirklevington Park, and this is a development that has been in existence for a number of decades.

Mr. Sallee stated that this appears to involve a substantial re-working of the front entry way. He also stated that the condominiums total almost 250 in this complex, and there is a single gated entry. They are proposing a redevelopment of that entryway to do away with the guard house, and allow a more automated entry system into the condominium development, which is what is prompting the variance.

He stated that there currently exists a 6-foot fence around the property, along the frontage of Redding Road, on their side of the sidewalk, and they are proposing to extend that fencing back into the property, away from the street. He said that there is a about a 20-foot portion of that fence that requires this requested variance; the remainder of the fencing that is proposed as part of the project is permitted at the 6-foot height desired. Mr. Sallee stated that the fence has masonry posts that are about 7 feet in height; and to the staff's understanding, they wish to continue that design around the new fenced area.

Mr. displayed photographs of the site, including a view of the entryway, looking to the north; and its relationship to Redding Road. He then pointed out the existing guard house on the property. Mr. Sallee presented the next photo, which was a view of a little closer (blow-up) of that area; then pointed out the existing fence pillars that are about 7 feet in height. Linking them (on the right), he pointed out the fence between the columns. He then highlighted the area (circled in red), on one side of the entry way, which is the 20-foot area that requires the variance. He said that the existing fence, of course, is non-conforming since the Zoning Ordinance changed about two years ago, to permit only a maximum height 4-foot fence in the front yard area. This fence has been there for many years; so it is that area, in particular, where the dimensional variance is required.

He then stated that, (looking at the site plan displayed on the overhead and providing a view of the same area), the fencing shown in yellow exists along their frontage; they are asking to build new fencing, eliminating the guard house, and go to the automated system at that entryway. They are attempting to erect the fence shown in pink and blue, and the pink fencing is limited to a 4-foot height under the ordinance. He stated that on the two wall plans that have been highlighted on the site plan, it is the area behind the wall plane where the fence is allowed to be 6 feet in height. He said that the one on the western side is in front of the wall plane, and therefore subject to the 4-foot restriction in the ordinance. This is where the variance to 6 feet is requested.

Mr. Sallee stated that there is an approved development plan for this location, and because it involves a gate, it will be required to be reviewed by the Planning Commission, regardless of the variance, to allow these types of changes. At that time, the Division of Fire would ordinarily have the opportunity to review the system and make sure that it complies with their access standards, in the case of an emergency run to the site.

He stated that the staff has recommended approval of this variance, for the reasons listed in the staff report and the agenda. Basically, staff has found that it would not alter the character of the vicinity, or cause a nuisance to the public; that it would be compatible with the existing development, and the variance is very minor in nature. He said that only a small portion of the fence is required to have a variance to maintain a consistent height with the existing. Mr. Sallee stated that staff did believe that in reference to the ordinance, that it would constitute a hardship to the appellant to have the different size fences in this particular area. He stated that staff found that the request is not a result of a willful violation of the Zoning Ordinance by the appellant.

At this time Chairman Stumbo asked the Board and staff if they had any questions for Mr. Sallee. There were none at this time.

Opposition – Mr. Terry McBrayer, attorney, was present on behalf of Mr. Joe B. Hall, a resident of the Oaks. He said he was there to speak about Mr. Hall's individual rights and to tell the Board what has recently taken place at the Oaks. He said that Mr. Hall lives there, and there is currently no fence in front of his condominium. Mr. McBrayer said that some months ago, the Oaks voted to change from a 24-hour guard to a gated community with security gates. They requested a second (service) entrance, which was turned down by the City. The Oaks Board voted to do away with the guards and provide another entrance. He said that directly in front of Mr. Hall's condominium, a 7-foot high fence will be erected, only steps from Mr. Hall's front door.

Mr. McBrayer said that the residents of the Oaks have several visitors on a daily basis. He expressed his concern about the use of a call box and the new access layout that has been proposed. It was his belief that it would cause congestion if several visitors come at one time, and would provide less security than the residents currently enjoy.

Mr. McBrayer cited the findings in the staff's report - i.e., that the increase in the height of the fence would not alter the character of the area or negatively impact any residents, noting his as well as Mr. Hall's disagreement with those statements. It was his contention that not only the height of the fence, but the changes proposed for the front entrance, would create issues and should be re-considered by the Oaks' Board of Directors. Mr. McBrayer then deferred to Mr. Hall for further comment.

Mr. Joe B. Hall, property owner at 395 Redding Road, expressed his concerns regarding the proposed security system; as well as the height of the fence, noting that the proposed 7-foot fence would have no bearing on the security of the property. He explained how he thought the height of the fence would affect him personally, as well as his and his neighbors' properties, noting that he has to abide by the rules of the Condominium Association and

the decisions they make; but he believes that what they intend to do with regard to the fence and proposed new security system will violate his rights. He asked the Board to protect those rights and turn down the requested variance.

Mr. Joe Gentry, 897 Turkey Foot Road, was present and spoke in support of Mr. Hall. He said, as a frequent visitor to the Oaks, he believes that the new system will be inconvenient for visitors to the property.

Mr. Richard Moloney, 126 Westgate Drive, was also present. He spoke about the traffic safety issues that might result with the new system if there are several visitors at one time, noting that people often must park across Redding Road from the property if there is a large function or an event taking place in the Oaks clubhouse.

Mr. Hall again addressed the Board and reiterated his belief that the 7-foot fence and gate system would affect his property, his convenience, and the convenience of his friends. He again asked that the Board not allow it, and to ask the Oaks to adhere to the requirements of Article 15-4(b) of the Zoning Ordinance, which generally restrict the height of front yard fences to four feet.

Board Comments – Mr. Glover asked Mr. Hall if he was saying that a 7-foot fence at that location would be out of character for the rest of the planned entryway. Mr. Hall stated that it is not out of character of what is existing on the road frontage, but they have never had fencing inside the property. He said that the fencing that is in place now was there when the facility was built; now they are going back inside the condominium association area with this fence, which is not in character with what is there. Mr. Hall stated that what is down the side boundary, the back boundary on New Circle Road, and the boundary between the residents and the condominium association on the other side, is not in character with this 7' fence either. He said if it was around the whole property, it would provide a sense of consistent security.

Mr. Glover asked Mr. Hall if his property was located within the condominium association property. Mr. Hall replied affirmatively. Mr. Glover then asked Mr. Hall if he was a member of the association. Mr. Hall said that he was. Mr. Glover asked Mr. Hall if they talked about this proposal in a meeting. Mr. Hall stated yes; however, he walked out of the meeting. Mr. Glover then asked if Mr. Hall was of a minority opinion in that meeting. Mr. Hall said yes, and went on to say that the fence doesn't bother anyone else, but they all say they see why he is upset;. He then stated that they are voting for what the condominium association has told them that it is going to save money and it is going to be more secure without causing any inconvenience.

Mr. Glover then stated that the character of the security at the gate is not the issue at hand. Mr. Hall stated that he realized that, and that this is only for the fence, but the fence being reduced to 4 feet is not going to be the case for increasing the security of the property. He stated that he does not want a 7-foot fence with locked gates in front of his sidewalk to the street.

At this time, Mr. Griggs said that he was wondering about the problems mentioned with backing up into Redding Road; but since it is not really part of the decision that the Board is faced with, he wasn't sure if it was even applicable. He then stated that if Traffic Engineering would like to speak about why they thought this was an acceptable situation, given the amount of traffic that might come in a short period of time, and the traffic on Redding Road, he would be interested in hearing it. Ms. Kaucher stated that in the site plan they are providing a pull-off area, and they are actually providing more storage than is there now. Mr. Griggs said that with a live guard, thirty cars could pass through the gate and keep Redding Road clear. Ms. Kaucher said with a visitor, that person would now go to the side, which means the residents would be able to by-pass through the new gate.

At this time, Mr. Hall stated that they have one gate with a guard at this time; when people pull up there, the guard, if there is time, fills out a visitor's pass. He said that if traffic backs up (which it often does), they send the people through. They pull up and park on the side of the entryway, and wait until the guard makes out a visitor's slip and takes it to them. He stated that if there is not a back-up, the guard makes out a pass and gives it right to them. He also stated that there are security cameras that check people as they come in.

Mr. McBrayer came back to the podium and stated that, for clarification purposes, the Oaks Board never voted again on this proposal. He said that they voted one time, and that was to have two entrances. He also said that one was for use of service - i.e., lawnmower, moving vans, etc.; but when the City turned that down, that shifted everything to this current configuration, and the Board didn't vote a second time.

At this time, Mr. Hall stated that he wanted to address the potential for a back-up on Redding Road. He said that with a guard on duty, they have the ability to open the gate up immediately and solve the problem of back-up, which occurs; but the guard takes care of it in a matter of seconds. He also stated that if someone pulls up to the call box, and there are people backed up behind them, they may be tied up there for 15-20 minutes.

Appellant Comments – Mr. Andy Holmes stated that he only wanted to address three issues. He stated that the exhibit that was displayed by Mr. Sallee on the overhead is an excellent exhibit. He said that the fence that was depicted in pink, to his understanding; was the only fence this variance applies to, and the only question before the Board. It is not the fence that is in front of Mr. Hall's property. He stated that Mr. Hall's property is on the other side of the entrance. The fence in front of his property is shown in blue, and is permitted now; and there is no variance requested for the fence that is in front of Mr. Hall's unit. He also stated that that fence is proposed about 27 feet from Mr. Hall's front door; it is not directly in front of Mr. Hall's door.

Mr. Holmes then explained about the stacking area that Ms. Kaucher alluded to provides approximately 40 or 50 feet more stacking room for traffic coming in off of Redding Road. He stated that the gate location is moving more to the interior of the property by about 50 feet or so; and that should provide additional space for stacking, and should help to alleviate some of the traffic congestion issues mentioned earlier.

He said that he has not been on the site during rush hour, nor has he personally observed how much traffic stacks up at the entrance way at those times; so he cannot make any statements that everything is going to be okay, and that there is never going to be a back-up there.

Mr. Holmes stated that the visitor procedure that is familiar to him is that a person drives in the front gate; they stop at the guard house; the guard calls whomever the person is visiting, and verifies that the resident is expecting the person; so the switch would be from having a guard call the resident, or having a call box for the visitor to directly call the resident.

He said that he has been there four times as a visitor to meet with his client, who is on the Oaks Board. The first time he went, he was turned away, and had to park at Kirklevington Park until they figured out what was needed. He noted that with his experience, the guard does not let a visitor in unless they can contact the person they are visiting.

Board Questions – Mr. Glover asked Mr. Holmes for clarification regarding the area that is designated on the exhibit in blue and asked if that fence is already in place. Mr. Holmes said it was not. Mr. Glover then asked what is proposed for that blue area. Mr. Holmes stated that it is about a 6-foot fence; it matches the existing fence along the frontage of the property. Mr. Glover then asked what is proposed for the area that is marked in pink. Mr. Holmes stated that it is the same; the only difference is that the area in pink is what requires the variance. Mr. Glover then asked Mr. Holmes if when he said "the same," if he meant the same 6-foot fence that is proposed for the blue. Mr. Holmes said yes; with the 7-foot, white masonry columns. Mr. Glover asked if the columns were already there. Mr. Holmes said that they are not in the portion that is shown in pink and blue- only the portion that is highlighted in yellow. He also stated that what they are trying to do is extend the fence and have it match what already exists. Mr. Glover asked if the idea of the proposed plan was to make it consistent all around the entrance way; and so there is going to be a fence that is consistently the same height all the way around that area that is shown on the exhibit, both in pink and blue. Mr. Holmes stated that is correct. Mr. Glover then asked about the area that is marked in green. Mr. Holmes said that is the existing fence. Mr. Glover then asked how high that fence was. Mr. Holmes said that it is the same height - 6 feet, with columns about 7 feet tall. Mr. Glover said that, as he understands Mr. Holmes' testimony, all three colors on the map are going to indicate a fence that is the same height for all the marked colors on the exhibit. Mr. Holmes said that is correct. Mr. Glover asked if he said that it was going to be about 6 feet tall. Mr. Holmes responded affirmatively.

Ms. Moore then asked staff for clarification regarding the area highlighted in blue- if it was permitted because it doesn't fall within the ordinance; and if it is only the pink area that the Board is dealing with; and whether the only question that is being asked is whether it can go from 4 feet to 7 feet. Mr. Sallee stated that all were correct.

Opposition Rebuttal – At this time, Mr. McBrayer came back to the podium and asked to put the exhibit back on the overhead. Mr. McBrayer stated that Mr. Hall's condo is closer to the fence, and the fence is going to be higher. He stated that visitors have to go all the way to the guard gate, park, but come back; then there is another gate coming back; and then another gate going into their condo; so there are three gates. He also said that the Oaks will not erect a 7-foot fence if the Board does not approve it.

Mr. Hall stated that the representative of the Oaks Condominium Association had said that everyone that comes to the Oaks has to have previous contact with the guard to enter. He said that he has never called the guard. At this time, Mr. Hall asked Mr. Moloney to come back to the podium. Mr. Moloney stated that what Mr. Hall said was correct. He said that when he pulls up, they ask who he is seeing, write the pass, and he goes on in; they have never called Mr. Hall in advance to tell him that he was coming.

Mr. Hall then said that there is so much misconception. He stated that there is no fence where the blue is shown on the site plan. Ms. Moore then asked Mr. Hall if he lived behind the blue area, and not behind the pink area. Mr. Hall again stated that there is no fence where the blue and pink are shown - it is non-existing at the present.

Ms. Moore stated that, to her understanding, the condominium association is only asking for a variance with respect to the pink portion; and the only thing before the Board is whether the pink portion of the fence can be four or seven feet in height. Mr. Hall stated that the blue fence is also on the site plan, and thus, is also before the Board.

Chairman Stumbo asked Mr. Sallee for clarification as to whether the issue before the Board is only regarding the pink area. Mr. Sallee stated that, to his understanding, according to that section of the ordinance, the section that restricts this to the 4 feet height limit is that between the front wall plane and the right-of-way. Chairman Stumbo then asked for a point of clarification - that the Board was not here to discuss the merits of the blue fence - only for the variance of in pink area. Mr. Sallee replied affirmatively.

At this time, Mr. Griggs explained to Mr. Hall that the blue fence shown is behind the wall plane; so the blue fence is not considered a front yard fence. He explained that they base the front yard on the right-of-way of Redding Road. Mr. Hall then asked, if this means they are not going to be building a 7-foot fence in front of his unit. Mr. Griggs stated that it is a 6-foot fence with 7-foot columns, but they are allowed to build a fence up to eight feet in height by ordinance, because it is considered a side yard fence; it is not in the front yard as it is defined.

At this time Chairman Stumbo stated that the Board has heard from the opposition and the appellant, and asked what the Board's wishes were.

Action – A motion was made by Mr. Glover, seconded by Ms. Moore, and carried 5-2 (Griggs and Meyer opposed) to approve **V-2013-76: THE OAKS CONDOMINIUM ASSOC.** - appeal for a variance to increase the maximum allowable height of a front yard fence from 4 feet to 7 feet in a Townhouse Residential (R-1T) and a Planned Neighborhood Residential (R-3) zone, at 395 Redding Road (Council District 4), for the reasons recommended by staff and subject to the four conditions of the staff's recommendation.

F. Administrative Reviews - None

IV. BOARD ITEMS - The Chair announced that any items a Board member wished to present would be heard at this time. There were none.

V. STAFF ITEMS - The Chair announced that any items a Staff member wished to present would be heard at this time.

Mr. Sallee stated that on Wednesday, December 4, 2013 at 4:00 p.m. there would be an A.P.A. (American Planning Association) lecture about fiscal impact analysis that is available for training credits for Board members.

VI. NEXT MEETING DATE - The Chair announced that the next meeting date would be December 13, 2013.

VII. ADJOURNMENT – Since there was no further business, a motion was made by Mr. Glover, seconded by Ms. Moore, and carried unanimously adjourn the meeting. The Chair declared the meeting adjourned at 2:45 p.m.

Barry Stumbo, Chair

James Griggs, Secretary